

Court of Appeals, State of Michigan

ORDER

In re J. Zielinski, Minor; In re T. Zielinski, Minor.

Docket Nos. 292914; 292915

LC Nos. 08-031523-NA; 08-031524-NA

Jane M. Beckering
Presiding Judge

Jane E. Markey

Stephen L. Borrello
Judges

The Court orders that the opinion issued on February 2, 2010, in these consolidated appeals be amended as follows. The fifth sentence of the fourth full paragraph on page 2 shall read: "Guardianship is not intended to be permanent and is not an alternative plan for someone like respondent who is not ready to take care of her children."

In all other respects, the February 2, 2010, opinion ~~remains~~ unchanged.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 17 2010
Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of in re J. ZIELINSKI, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BRANDY ZIELINSKI-JACKSON,

Respondent-Appellant.

UNPUBLISHED

February 2, 2010

No. 292914

Saginaw Circuit Court

Family Division

LC No. 08-031524-NA

In the Matter of in re T. ZIELINSKI, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BRANDY ZIELINSKI-JACKSON,

Respondent-Appellant,

and

JOHNNY RAY NICHOLSON,

Respondent.

No. 292915

Saginaw Circuit Court

Family Division

LC No. 08-031523-NA

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Respondent-mother appeals as of right from the trial court orders terminating her parental rights to the minor children, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j) (conditions that led to the adjudication continue to exist), (g) (failure to provide proper care and custody), and (h)

(parent is imprisoned for a period exceeding two years).¹ For the reasons set forth in this opinion, we affirm.

On appeal, respondent does not challenge the trial court's finding that petitioner proved the statutory grounds for terminating her parental rights. Rather, she argues that termination of her parental rights was not in the best interests of her minor children.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interests of the children. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999).

The trial court did not clearly err in its best interests determination. Based on the record as a whole, the court correctly found that termination of respondent's parental rights was in the children's best interest because it put an end to their state of limbo and their constant fear that their placement would be disrupted. We concur with the findings of the trial court that the minor children need stability, and due to respondent's lengthy incarceration, she will not be available to the children until at least April 24, 2012.

Respondent argues that termination of her parental rights was an unnecessary and drastic measure because her sister could have obtained guardianship over the children. The trial court properly rejected respondent's proposed guardianship care plan. The minor children are both young and need permanency. Guardianship is not an appropriate option for such young children under these circumstances, where their parent is incarcerated for an extended period of time. Guardianship is intended to be permanent and not an alternative plan for someone like respondent who is not ready to take care of her children. Even if respondent were released from prison early, she would still need to obtain adequate housing for the children, amongst several other preconditions that would have to be placed on her prior to allowing the children back into her care. Moreover, any chance of her immediate release from prison is speculative and inconsistent with her minimum sentencing.

Respondent also contends that termination is not in the children's best interest because she made significant positive changes in her life. She argues that she has had no disciplinary problems during her incarceration and that substance abuse is no longer an issue for her. Although respondent may have made some changes in her life, she is still unable to parent the children due to her incarceration. It is the minor children's best interests to be with an available, fit caregiver who can prioritize their care and well-being. Respondent's habitual criminal activity demonstrates that she is not an appropriate caregiver. Given respondent's criminal history, there is no reason to believe she would be able to offer the children a stable home devoid of crime and maintain her availability to them even if she were released from prison in the near future.

¹ The parental rights of father, Johnny Ray Nicholson, to the minor child in Docket Number 292915, were also terminated but he is not a party to this appeal. References to "respondent" throughout this opinion will be to respondent-mother only.

Finally, respondent argues that a bond still exists between her and the children. Although the trial court's record shows that respondent made efforts to send cards to the children, there is no evidence of a strong bond. Testimony admitted during adjudication revealed that the minor children demonstrated more attachment to the woman supervising their visit than to respondent. After visiting respondent, the children did not discuss her or their visit with her. Moreover, there is no evidence that the minor children had any emotional or behavioral difficulties due to respondent's absence. In fact, the only difficulty they had was caused by their lack of permanence and their fear that the caseworkers would send them to another placement.

Due to respondent's lengthy incarceration, she is unable to provide her minor children with the stability and permanence that is in their best interests. "If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000), quoting *In re AP*, 728 A2d 375, 379 (Pa Super, 1999). Thus, the trial court did not clearly err in finding that termination of respondent's parental rights was in the minor children's best interests.

Affirmed.

/s/ Jane M. Beckering

/s/ Jane E. Markey

/s/ Stephen L. Borrello